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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Serial No. | 10/065,729 | Conf. No. | 6166 |
| In Re Application of: | Buswell <i>et al.</i> | Art Unit: | 2152 |
| Filed: | 11/13/2002 | Dkt. #: | BUR920020006US1 (IBMB-0013) |
| Title: | CLIENT-SERVER TEXT MESSAGING MONITORING FOR REMOTE COMPUTER MANAGEMENT | Examiner: | Doan, Duyen My |

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Notice of Appeal has been filed together with this Request. Please charge Deposit Account No. 09-0456 for any required fees for filing this Request.

Applicants submit that the above-identified application is not in condition for appeal because the Final Office Action is obviously defective in facts and in law. Claims 1-20 are pending in this application.

In the Final Office Action, claims 1-7, 9-12, 14-18 and 20 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Wick *et al.* (USPN 6,691,162), hereinafter "Wick"; and claims 8, 13 and 19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wick, in view of MacGregor *et al.* (US Publication No. 2005/0102382), hereinafter

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"MacGregor." Applicants submit that this rejection is clearly not proper and without basis for the reasons stated below. As the Final Office Action (Final OA) incorporates some detailed explanations of the Office Action dated 11/17/05 (see Final OA at page 2), the latter Office Action (OA) will also be addressed in the arguments below.

With respect to independent claims 1, 10 and 14, the claimed invention includes, *inter alia*, "the monitor configured to monitor a CSTM server for a command from a management system posted thereto[.]" (Claim 1; similarly claimed in claims 10 and 14). That is, in the claimed invention, the CSTM monitor is configured to monitor a command from a management system different than the computer system where the CSTM monitor is located. Although unclear from the Office's statements, Applicants assume for argument sake that the Office is alleging that one of the IM clients (targeting or targeted user) is a management system in order to address this limitation. However, even if this assumption is correct, Wick fails to disclose this feature. Applicants will address each possible scenario to illustrate, but emphasize that the particulars presented are made for argument sake only and that Applicants are not admitting that Wick discloses any of the details presented. In a first scenario, the Office may be alleging that the targeting user in Wick is a management system and the targeted user is a managed computer system. In this assumption case, the management system (targeting user) sets up a command (pounce) in the server to be executed by a management program (targeted user) installed on the managed computer system (targeted user). However, in this scenario, the managed computer system (targeted user) does not monitor the server for the command (pounce) because, in Wick, the targeted user is passive regarding a pounce set up by the targeting user until a hand shake has been established from the server. Accordingly, the managed computer system (targeted user) does not monitor the server, and Wick fails to disclose all of the claimed features based on this

scenario of assumptions. In addition, under this assumption case, there is no disclosure of a management program on the targeted user.

In a second assumption scenario, the Office may be alleging that a targeted user in Wick is a management system and a targeting user is a managed computer system. In this case, the alleged managed computer system (targeting user) does not monitor the server for a command because the targeting user is notified by the server, but does not monitor the server. (See col. 5, lines 25-27.) Moreover, under the second scenario, an occurrence of a specified event by the management system (targeted user) is not a command from the management system (targeted user), i.e., an instruction to do something. In conducting the specified event, the management system (targeted user) does not have the intention to request the managed computer system (targeting user) to do something. That is, the management system (targeted user) performs a passive specified event, but it does not issue a command. In addition, under this assumption case, there is no disclosure of a management program on the targeting user.

In view of the foregoing, in both assumption scenarios, which are the only possible scenarios, Wick does not disclose "the monitor configured to monitor a CSTM server for a command from a management system posted thereto[.]" (Claim 1). Accordingly, Applicants respectfully request withdrawal of the rejection.

With further respect to independent claims 1, 10 and 14, the claimed invention includes, *inter alia*, "a command from a management system" and "a management program installed on the computer system which is responsive to the command from the management system." (Claim 1; similarly claimed in claims 10 and 14). Management generally means act, manner, or practice of managing, handling, supervision, or control. The claimed invention further describes management as "to evaluate, monitor and correct problems on [a] managed computer system[.]"

where the management program is located. (Specification of current application at paragraph 0017). In addition, a management program is defined as "any now known or later developed computer management utility that is responsive to commands issued by [a] management system." (Specification of current application at paragraph 20). Applicants submit that Wick does not disclose, *inter alia*, a management system or a management program. (Claim 1). In particular, Wick relates to an instant messaging (IM) system that allows a targeting user (pouncer) to set up a "pounce" that executes when a specified event occurs, e.g., targeted user (pouncee) performs a certain act like signing on. A pounce refers to an ability to "send a message, emit an audible or visual notification, execute a command, etc." (Col. 5, lines 1-4). The targeting user is notified of the specified event's occurrence. (Col. 5, line 24-27).

Wick, however, never discloses a management system that is capable of evaluating, monitoring and correcting problems on managed computer systems (i.e., the definition of management in the specification), or is capable of managing, handling, supervising, or controlling managed computer systems (i.e., the general definition of management). An instant messaging (IM) system and/or an IM client application thereof are incapable of performing the above identified functions. In particular, the IM system and client applications as disclosed in Wick are incapable of evaluating a situation on another computer system such as determining an application's update status, and cannot correct problems on those systems. That is, Wick, even if the term is given its broadest interpretation possible, does not disclose or suggest "management" tasks as defined by the current application. Applicants submit that the Office's apparent reliance on one or the other of the IM client applications in Wick (i.e., targeting or targeted user IM clients) acting as a management system is illogical and should be reconsidered. Applicants also note that the Office never addresses the recited language that the "command [is] from a

management system.” (See OA at page 3.) Furthermore, Wick does not disclose a management program that is responsive to commands from a management system. In view of the foregoing, Wick does not disclose the claimed invention including a management system or a management program. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claims 2-9 are dependent upon claim 1, claims 11-13 are dependent upon claim 10 and claims 15-19 are dependent upon claim 14. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

In view of the foregoing, Applicants submit that the Final Office Action is defective in facts and in law, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants’ undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: 7/26/06



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